IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 34080 of 2004(F)

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PETITIONER:

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N.L.JOSEPH (RETIRED),
DRIVER, K.S.R.T.C., S/O.THE LATE SRI.LONAN,
NADUVILEDATH HOUSE, MUHAMMA P.O., ALAPPUZHA
DISTRICT.

BY ADV. SRI.C.S.MANU

RESPONDENTS:

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1.KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURM, REP. BY ITS MANAGING DIRECTOR.

2.DISTRICT TRANSPORT OFFICER,
KERALA STATE ROAD TRANSPORT CORPORATION,
ALAPPUZHA.

BY ADV.SRI.K.PRABHAKARAN, S.C. FOR K.S.R.T.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC NO.34080/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE MEMORANDUM NO.PL4-4904/98/ALP DATED 16.12.1998 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P2: TRUE COPY OF THE JUDGMENT DATED 15.1.2003 IN O.P. O.30869 OF 2002 PASSED BY THE HONOURABLE HIGH COURT OF KERALA.

EXT.P3: TRUE COPY OF THE JUDGMENT DATED 11.10.1999 IN C.C.NO.192 OF 1994 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT, AMBALAPPUZHA.

**PIUS C. KURIAKOSE,J.**

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W.P.(C)No.34080 of 2004

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Dated: 20th December, 2006

**JUDGMENT**

The petitioner retired as Driver from the service of the K.S.R.T.C., the 1st respondent on 31.12.1998 on attaining the age of superannuation and Ext.P1 is the relieving order issued in that regard. This court under Ext.P2 judgment dated 15.1.2003 directed the respondents, the K.S.R.T.C. and the concerned D.T.O. to settle the claim of the petitioner for terminal benefits. The grievance of the petitioner is that till date the 1st respondent has not disbursed the terminal benefits due to him. The petitioner is informed by the respondents that he has liability to the respondents to the tune of Rs.6,000/- on account of damage sustained by the K.S.R.T.C. bus driven by him in an accident which occurred on 30.4.1994. The petitioner contends that he is not liable to pay the above amount. No such liability was quantified by the respondents either before his retirement or even three years after his retirement with notice to him. He points out that the accident occurred not on account of any negligence on his part and relies on Ext.P3 judgment of the Judicial First Class Magistrate Court, Ambalapuzha. On the above facts, the petitioner raises grounds A to D and prays a writ of mandamus commanding the respondents to pay the terminal benefits due to him

without deducting any amount from him on account of the damages sustained by the bus in question.

2. The Standing Counsel for the K.S.R.T.C. has filed a statement. It is stated therein that pursuant to Ext.P2 judgment, the service gratuity and the last pay payable to the petitioner had been adjusted towards the liabilities outstanding against him. According to this statement, a sum of Rs.6780/- is due from the petitioner as cost of damages and after adjusting a sum of Rs.5882/-, nothing is payable to the petitioner.

3. I have heard the submissions of Mr.C.S.Manu, learned counsel for the petitioner and Mr.K.Prabhakaran, Standing Counsel for the K.S.R.T.C.

4. My attention was drawn by Mr.Manu to the judgment of the Division Bench of this court in **Badarudeen v. Kerala State Road Transport Corporation** (I.L.R. 1999(1) Kerala 1). It is clearly laid down by the Division Bench in the above judgment that under Note 3, Rule 3 of Part III K.S.R., the liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years of him becoming pensioner. The Division Bench further

held in that case where also the K.S.R.T.C. was the respondent that when the K.S.R.T.C. decides to take further action under Rule 3 of Part III- K.S.R., the Corporation shall serve a show-cause notice on the persons concerned specifying the action proposed to be taken under the Rule and the persons concerned shall be required to submit their reply to the show-cause notice within such time as may be prescribed by the Corporation. What is contemplated under Note 3 to Rule 3 is a communication of the liabilities to the pensioner so as to enable him to submit his explanation before recovery is effected. I notice that in the instant case, there has been no quantification of the liability on the petitioner with notice to the petitioner and that too within three years of his retirement. The principles laid down in **Badarudeen's** case (supra) squarely apply in this case also. It is further seen from Ext.P3 judgment of the Magistrate Court which tried the petitioner for offences in connection with the accident in question that the petitioner was given a clean acquittal. The finding is that the petitioner is not guilty and that his defence is highly probable. For both the above reasons, the petitioner is entitled to succeed. The Writ Petition accordingly will stand allowed. The respondents are directed to pay the terminal benefits due to the

petitioner without deducting any amount from the petitioner on account of the damage sustained to the bus, KLX.4205(S-589) of the K.S.R.T.C. bus in the accident which occurred on 30.4.1994 while the petitioner was driving that bus. In the circumstances there won't be any order as to costs.

srd **PIUS C.KURIAKOSE, JUDGE**